

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
THE TOWN OF IONE,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,
and DUWYNE GEIST,

Respondents.

PCHB No. 82-184

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a Washington State Department of Ecology's Report of Examination on Surface Water Permit Application No. S3-26707 of Duwyne Geist, came before the Pollution Control Hearings Board in a formal hearing on March 17, 1983, in Spokane, Washington. Seated for and as the Board were Gayle Rothrock (presiding) and Lawrence J. Faulk. The proceedings were recorded by Anita Lowe O'Brien, court reporter.

Appellant was represented by William E. Crist, Water Commissioner for the Town of Ione. Respondent Department of Ecology was

1 represented by Wick Dufford, Assistant Attorney General for the
2 Department of Ecology at Olympia, Washington. Mr. Geist represented
3 himself.

4 Witnesses were sworn and testified. Exhibits were admitted and
5 examined. Oral and written argument was taken into the record. From
6 the testimony, evidence and argument the Board makes these

7 FINDINGS OF FACT

8 I

9 Appellant City of Ione has appealed the proposed granting of
10 permit No. S3-26707 to respondent Duwyne Geist.

11 II

12 The four-part criteria for the issuance by DOE of a permit to
13 appropriate public surface water as set forth in RCW 90.03.290 is that:

- 14 1. water is available for appropriation
15 2. for a beneficial use
16 3. and the appropriation will not impair existing rights
17 4. nor be detrimental to the public welfare.

18 III

19 This case involves a single surface water source from Cedar
20 Creek. Various measurements of the Creek indicate a flow of
21 approximately 2.1 cubic feet per second to 4.0 cubic feet per second
22 during years of low flows. This data is supported by a United States
23 Geological Survey Report entitled "Low Flow Characteristics of
24 Selected Streams in Northern Eastern Washington."
25

1 IV

2 The place of use is located approximately 2.5 miles northwest of
3 the Town of Ione in their watershed, on a 20-acre parcel bisected by
4 Cedar Creek. The point of diversion is in Cedar Creek Canyon which is
5 behind and west of Mr. Geist's completed home.

6 V

7 The Department of Ecology records indicate two surface water
8 withdrawals downstream from the applicant's point of diversion. The
9 first results from surface water Certificate No. 6819 authorizing 0.02
10 cubic feet per second withdrawal from Cedar Creek. The second is the
11 Town of Ione's water right Claim No. 001492 claiming approximately 3.6
12 cubic feet per second withdrawal from Cedar Creek for municipal use.

13 VI

14 The Town of Ione concedes that Mr. Geist's withdrawal of 0.02
15 cubic feet per second will not significantly affect the availability
16 of water for use by the town. However, they also argue that if
17 Mr. Geist's application is approved, then other development will
18 follow which could lead to the possible pollution of the town's
19 watershed and Cedar Creek.

20 VII

21 In addressing the water availability concern, it has been shown
22 that water has been available and will continue to be available. Late
23 in the summer of 1981, the Department of Ecology observed two to three
24 inches of water going over the Town of Ione's storage reservoir dam on
25 Cedar Creek. In June of 1982, the Department of Ecology observed

1 approximately twelve inches of water going over the dam. Furthermore,
2 at such time as the waters of Cedar Creek are found to be depleted due
3 to drought or abuse, the Department of Ecology shall have the
4 authority to regulate all water diversions from Cedar Creek by date of
5 priority.

6 VIII

7 Any possible pollution of Cedar Creek is diminished by the
8 existence of applicant's drainfield and septic system which has been
9 installed. In addition, the Town of Ione treats its water before it
10 is diverted into their storage facility. The Pend Oreille County
11 Health Department has made approving comments on Mr. Geist's proposed
12 water withdrawal from Cedar Creek. The Department of Game has signed
13 off on this application with a provision that screening be installed
14 to prevent fish from being drawn into the diversion.

15 IX

16 If appellant's diversion is approved, there is sufficient water
17 available to supply appellant and all current appropriators. The
18 water to be appropriated is for a beneficial use. The appropriation
19 will not impair existing water rights and will not be detrimental to
20 the public welfare.

21 X

22 Any Conclusion of Law which should be deemed a Finding of Fact is
23 hereby adopted as such.

24 From these Findings the Board enters these

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 82-184

1 CONCLUSIONS OF LAW

2 I

3 The Report of Examination recommending issuance of Permit No.
4 S3-26707 was accomplished by DOE in accordance with RCW 90.03.290 and
5 RCW 90.54.

6 II

7 In this matter the burden of proof is on the appellant to
8 establish that the Department of Ecology erred in issuing the
9 favorable Report of Examination on Application No. S3-26707 to
10 Mr. Geist. Appellant has failed to sustain the burden of proof.
11 However, the Board notes that the Department of Ecology should have
12 discussed this application and watershed protection matters more
13 directly with the elected and appointed officials of the town.

14 III

15 A modest appropriation of surface water for domestic uses in Cedar
16 Creek in this circumstance will not, in any respect, be detrimental to
17 the public welfare. RCW 90.54.

18 IV

19 The order of DOE which directed the issuance of the subject permit
20 to respondent Mr. Geist should be affirmed because DOE has
21 affirmatively shown that the permit was properly issued.

22 IV

23 Any Finding of Fact which should be deemed a Conclusion of Law is
24 hereby adopted as such.

25 From these Conclusions the Board enters this

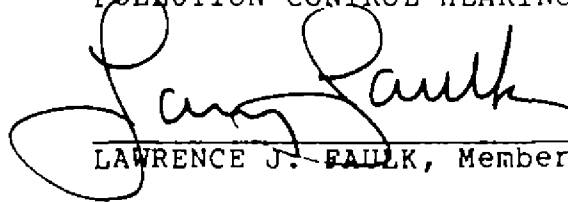
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 82-184

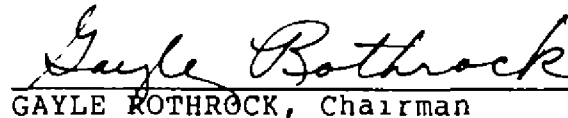
ORDER

The Order and Report of Examination of the Department of Ecology authorizing the issuance of permit No. S3-26707 for appropriation of public surface water is hereby affirmed.

DATED this 16th day of May, 1983.

POLLUTION CONTROL HEARINGS BOARD


LAWRENCE J. FAULK, Member


GAYLE ROTHROCK, Chairman